IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NOs.35589, 27908 and 4292 of 2006 and 31335 of 2007
AND
M.P.NO.2 OF 2006

T.Rathinasamy .. Petitioner in all the petitions

Vs.

1.The Chief Conservator of Forests,
Social Forestry Wing,
Chennai-600 015.
2.The Conservator of Forests,
Social Forestry,
Chengalpattu Circle,
Chengalpattu.
3.The District Forest Officer,
Coimbatore Division,
Coimbatore .. Respondents in WP No.35589 of 2006

1.Government of Tamil Nadu
rep. by the Secretary to Government,
Environment and Forests Department,
Fort St. George,
Chennai-600 009.
2.The Principal Chief Conservator
of Forests,
Chennai-600 015. .. Respondents in WP No.27908 of 2006

1.The Government of Tamil Nadu
rep. by Secretary to Government,
Environment and Forest Department,
Secretariat,
Chennai-9.
2.The Chief Conservator of Forests
(Territorial),
O/o Principal Chief Conservator
of Forests,
Chennai-15.

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3.The District Forest Officer,
Kodaikanal Division,
Kodaikanal. .. Respondents in
WP No.4292 of 2006

1.Government of Tamil Nadu
rep. by Secretary to Government,
Environment and Forest Department,
Secretariat,
Chennai-600 009.

2.The Principal Chief Conservator
of Forests,
Chennai-600 015. .. Respondents in
WP No.31335 of 2007

These writ petitions have been preferred under Article 226 of the Constitution of India. W.P.No.35589 of 2006 is for the issue of the writ of certiorari to call for the records of the second respondent herein in his Pro.No.12007/95/Va.2, dated 16.10.1996 and to quash the order of recovery passed by the second respondent herein.

W.P.No.27908 of 2006 is for the issue of the writ of certiorarified mandamus to call for the records of the first respondent relating to G.O.Ms.No.92, Environment and Forests (FR.1) Department, dated 21.6.2005 and to quash the same to a limited extent of non inclusion of the name of the petitioner therein and to direct the respondents to include the name of the petitioner in the appropriate place in the said panel and to consequently promote him as Assistant Conservator of Forests with retrospective effect from the date of promotion of his immediate junior with all consequential benefits, notwithstanding and without reference to the order, dated 16.10.1996 and the order of punishment dated 9.6.2000 of the second respondent and without prejudice to the claim of inclusion of name in the panel for 1998-1999 approved in G.O.Ms.No.194, Environment and Forests Department, dated 12.12.2001.

W.P.No.4292 of 2006 is for the issue of a writ of certiorari to call for the records of the second respondent relating to the order in Pro.No.BB1/22776/2000, dated 9.6.2000 and to quash the same.

W.P.No.31335 of 2007 is for the direction to the first respondent to include the name of the petitioner in the ensuing panel of Forest Rangers, fit for promotion as Assistant Conservator of Forests in the appropriate place therein and to grant promotion as such.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.S.N.Kirubanandam

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COMMON ORDER

This order shall govern the above four writ petitions.

2.W.P.Nos.35589 and 4292 of 2006 and 31335 of 2007 were taken on file on transfer of O.As, namely O.A.Nos.8525 of 1997, 229 of 2001 and 64 of 2004, respectively on the file of the Tamil Nadu Administrative Tribunal, Chennai. W.P.No.27908 of 2006 has been filed by the petitioner directly before this court.

3.The court heard the learned counsel on either side. The affidavits filed in support of the petitions and also the counter affidavit are perused.

4.The following facts would emerge as the facts admitted.

The petitioner, while serving as District Forest Ranger, Kodaikanal Division, was served with a charge memo under Rule 17 (b) of the Tamil Nadu Civil Services (D&A) Rules, whereby four charges were levelled against him. Since explanation tendered by him was not found satisfactory, an Enquiry was conducted and the Enquiry report was given by the Enquiry Officer, whereby the charges 1 and 3 were held not proved, while the charges 2 and 4 were proved. Along with the report, he was called for to put forth his representation, which he made. Following the same, final order was passed on 9.6.2000, imposing the penalty of Stoppage of increments for 5 years with cumulative effect. The petitioner preferred an appeal before the first respondent Government against the said penalty. While the same was pending, he preferred O.A.No.229 of 2001 before the Tribunal and now, it has been transferred to this court and taken on file as W.P.No.4292 of 2006.

5.The court heard the learned counsel on either side. After considering all the submissions and the materials available, the court is of the considered opinion that the proceedings and the punishment under challenge have got to be set aside for more reasons than one. As could be seen, all the four charges centred around the fact that the petitioner, while serving as Forest Ranger, has allowed the private party to form a new road to an extent of 6.5 to 7 metres in the reserved forest area. When charges were levelled against him, the tenor of the explanation given by him was to the effect that there was no negligence of duty by the petitioner; that originally, the road was in existence and that there was no formation of a new road or widening of the existing road. While the enquiry was pending, the private parties filed O.S.Nos.227, 231 and 240 of 1997 on the file of the District Munsif, Kodaikanal for a declaration that the pathway in question was one intended for public use by the plaintiffs therein and also for permanent injunction. It is not in controversy that the District Collector, Dindigul, the District Forest Officer, Kodaikanal, the Secretary to Government, Forest Department, Secretariat, Chennai-9 and the President, Panchayat Board, Poombarai were shown as defendants. A copy of the judgment is

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placed in the hands of this court, wherein it has been elaborately considered and found that the passage, having the width of not less than 6 meters, was actually available already and it has been in long use and under these circumstances, the charges, which were framed based on the formation of the new road or the extension of width on the existing road, cannot be accepted.

6.Apart from that, in the instant case, certain procedural irregularities were also noticed. The charges were levelled against the petitioner herein, who was the Forest Ranger. In the instant case, as could be seen from the charges, when the Ranger, Forest Guard and Forest Watcher were involved in the incident, the Principal Chief Conservator of Forests should have also made them as parties to the proceedings, but they were not done so. The learned counsel brought to the notice of the court the Rule 9(c) (2) of the Tamil Nadu Civil Services (D & A) Rules and thus, when more than one officials are involved, the Principal Chief Conservator of Forests should have initiated disciplinary proceedings against all, but not done in the instant case. Added further, the admissions made by the Assistant Conservator of Forests in the course of his evidence, would clearly reveal that his evidence was of no worthwhile to come to a conclusion. Hence, the court is of the considered opinion that the reasons stated above would be suffice to set aside the order passed on 9.6.2000, imposing the penalty of stoppage of increments for 5 years with cumulative effect. Accordingly, it is set aside and W.P.No.4292 of 2006 is disposed of. No costs.

7.In W.P.No.35589 of 2006, the petitioner has challenged the order of recovery passed by the second respondent, namely Conservator of Forests, Social Forestry, Chengalpattu Circle on 16.10.1996.

8.A charge memo was served upon the petitioner, while he was serving as Forest Range Officer, Social Forestry, Chengalpattu Range, Chengalpattu Division, in respect of certain alleged irregularities. The proceedings were initiated under Rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules. The charges levelled against him relates to the alleged excess expenditure incurred over and above the sanctioned estimates. An explanation was tendered, which was found not satisfactory. An enquiry was ordered. The result of the enquiry was that excess expenditure was found to the tune of Rs.37,846/-. An order was passed on 16.10.1996, directing the recovery of Rs.37,846/- from the salary of the petitioner in 38 monthly instalments, namely the first instalment at Rs.846/- and the remaining instalments at Rs.1000/- each. An appeal was preferred by him and the same was pending. Under these circumstances, the petitioner filed O.A.No.8525 of 1997 before the Tamil Nadu Administrative Tribunal, Chennai and on transfer, it was taken by this court as W.P.No.35589 of 2006.

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9.The only contention put forth by the learned counsel for the petitioner is that the fund, which was sanctioned by the Divisional Forest Officer, has been granted as advance to the

Foresters and it was disbursed by them, maintaining proper accounts for the same. Except supervision done by the petitioner, who was the Ranger, he had no hand in them. If there was any excess expenditure found at any point of time, the sanction of funds for subsequent works could have been withheld. But, not done so and they were continuously making payment. As per G.O.Ms.No.92, Environment and Forest Department, dated 9.3.1993, in cases of irregularities resulting in financial losses to the Government, recovery of excess or inadmissible items of expenditure were fixed in the following scale. The District Forest Officer 25%, Ranger 40% and Forester and Forest Guard 35%. In the instant case, what was awarded was 50% by an order of recovery. Even as per the G.O., it was excess and further, procedural formalities have not been properly followed and under these circumstances, the order of recovery has got to be set aside.

10.The court heard the learned counsel for the respondents. The learned counsel would submit that in the instant case, while an appeal was preferred, challenging that order, the appellate forum has reduced the recovery of penalty to Rs.30,577/- from Rs.37,846/-, which would represent 40% after applying G.O.Ms.No.92, dated 9.3.1993, as referred to above. It is also brought to the notice of the court that the petitioner has also made the payment of entire penalty as fixed by the appellate forum on 11.8.2006. Under these circumstances, this writ petition has got to be dismissed.

11.After careful consideration of the submissions made, the court is of the considered opinion that the writ petition does not carry any merit whatsoever for the reasons that there was an order passed directing for recovery of penalty of Rs.37846/- and on appeal, it was reduced to Rs.30577/-. It is pertinent to point out that the petitioner, pending appeal, has made the entire payment on 11.8.2006, which would represent the penalty amount. By making the penalty amount, now the petitioner cannot be allowed to tell that the entire proceedings are vitiated or proceedings are infirm. Under these circumstances, payments made by the petitioner on 11.8.2006 would be suffice to put to an end to the proceedings, which culminated in the recovery of penalty. Hence, W.P.No.35589 of 2006 is dismissed. No costs.

12.In W.P.No.27908 of 2006, the petitioner has sought for writ of certiorarified mandamus to call for the records of the first respondent relating to G.O.Ms.No.92, Environment and Forests (FR.1) Department, dated 21.6.2005, wherein the panel for promotion to the post of Assistant Conservator of Forests for the year 2000-2001 has been approved and to quash the same to a limited extent of non inclusion of the name of the petitioner therein and to direct the respondents to include the name of the petitioner in the appropriate place in the said panel and to consequently promote him as Assistant Conservator of Forests with retrospective effect from the date of promotion of his immediate junior with all consequential benefits, notwithstanding and without reference to the orders of punishment imposed in

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Pro.No.12007/95 V2 dated 16.10.1996 issued by the Conservator of Forests, Social Forestry Circle, Chengalpet and the order of punishment imposed in Pro.No.AB1/22776/2000, dated 9.6.2000 of the second respondent and without prejudice to the claim of inclusion of name in the panel for 1998-1999 approved in G.O.Ms.No.194, Environment and Forests Department, dated 12.12.2001.

13.The case of the petitioner is that he was appointed as Forest Apprentice in the Forest Department on 1.11.1980; that by virtue of service and other qualifications, he had already become eligible for promotion as Assistant Conservator of Forests. His name should have been included in the panel for the year 1998-1999, but it was not included. The reason for the non inclusion is the pendency of the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules initiated by the District Forest Officer, Kodaikanal in C.No.2539/97/E1, dated 12.5.1997. The disciplinary proceedings ultimately culminated in the order of punishment of stoppage of increment for five years with cumulative effect, which was passed by the Chief Conservator of Forests (Forest Administration), Chennai, dated 9.6.2000. An appeal preferred against the same was also pending. In view of the pendency of the same, the promotion of the petitioner was deferred. Then, in view of the currency of the punishment, the petitioner preferred O.A.No.229 of 2001 on the file of the Tamil Nadu Administrative Tribunal, Chennai, challenging the said order of punishment. Again, his name was deferred in the next panel dated 21.5.2003. The tribunal in O.A.No.229 of 2001, has granted stay on 12.1.2001 and thereafter, it was extended until further orders. The tribunal was abolished. However, interim stay of the punishment is in force. But, the order of punishment, dated 9.6.2000 was implemented and thus, the punishment of stoppage of increment for five years with cumulative effect was over as early as on 18.6.2005 itself. The other proceedings initiated against him were also the reasons for non inclusion of the petitioner in the panel, namely there was an order of recovery of Rs.37846/- by an order dated 16.10.1996. The entire payment was actually made on 11.8.2006 in order to put to an end to the proceedings.

14.The learned counsel for the petitioner would submit that the promotion was deferred for two reasons; that firstly there was punishment of stoppage of increment for five years with cumulative effect, which is challenged originally before the Tribunal and on transfer, it was taken by this court in W.P.No.4292 of 2006; that secondly, there was a punishment of recovery of penalty; that the petitioner has made the entire payment; that so far as the punishment of stoppage of increment for five years with cumulative effect is concerned, the period is over; that so far as the other proceedings for the recovery of penalty was concerned, the proceedings were initiated and charges were framed under Rule 17(a); that so long as the proceedings were initiated under Rule 17(a), it cannot be a bar for including him in the panel for promotion and thus, he is entitled for inclusion in the panel for 2000-01 and he has got to be placed accordingly.

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15.Contrary to the above, the learned counsel for the respondents would submit that so far as the first proceedings, whereby there was an order of punishment of stoppage of increment for five years was concerned, the stoppage of increment came to an end on 30.09.2005 and thus, so long as it was in force, there was no question of consideration would arise and accordingly, it was deferred; that so far as the other proceedings for recovery of penalty to the tune of Rs.37846/- was concerned, it was reduced by the appellate forum to Rs.30577/-; that payment has been made on 11.8.2006; that so far as the preparation of panel for the year 2006-07 was concerned, the crucial date was 15.8.2005, but he has made payment only on 11.8.2006 and hence, that was an impediment to include the petitioner in the panel prepared for 2006-07; that the crucial date for preparation of panel for 2007-08, was 15.8.2006 and hence, as on today, there is no impediment for considering his name to be included in the panel and hence, it has got to be ordered. Added further the learned counsel that the contention of the petitioner's side that the charges were levelled against him and proceedings were initiated under Rule 17(a) and hence, it cannot be a bar and he has got to be included, cannot be countenanced for the reason that what was not the bar was only pending proceedings. In the instant case, the proceedings culminated in the recovery of punishment of penalty of Rs.37846/-, which was directed to be recovered and the same was in force till he made the payment on 11.8.2006 and under these circumstances, it is not a case of pending proceedings, which culminated in an order of imposing penalty and hence, it cannot be considered.

16.In answer to the above, the learned counsel for the petitioner would submit that there was an imposition of penalty by an order, dated 16.10.1996 and there was stay granted by the Tribunal and hence, it has no force and there cannot be any impediment to include his name in the panel for the year 2000-01 itself.

17.The court has paid its anxious consideration on the submissions made. It is not in controversy that two proceedings were initiated against the petitioner, which culminated in two punishments. One is the stoppage of increment for five years with cumulative effect, which was passed on 9.6.2000. This period of five years was already over. Apart from that, this court has set aside the entire punishment and hence, it is of no avail for the department to state that the name of the petitioner cannot be included. Insofar as the other proceedings, imposing penalty of Rs.37,846/- on 16.10.1996, the petitioner preferred an appeal and also the writ petition before this court. The petitioner has made the payment of Rs.30577/- as fixed by the appellate forum, which would represent 40% of the excess expenditure, on 11.8.2006. The order, which was passed on 16.10.1996, was in force till he made the payment on 11.8.2006.

18.At this juncture, it is pertinent to point out that the petitioner has made the payment of Rs.30577/- on 11.8.2006, which would be indicative of the fact that he has admitted the same.

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Now, after making the payment as fixed by the appellate forum, now the petitioner cannot be allowed to say that stay was granted in respect of the order, dated 16.10.1996 and therefore, there was no punishment against him and the punishment was under suspension and hence, he is entitled to be included in the panel for the year 2000-01. These contentions, though attractive at the first instance, shall not stand the scrutiny of law. It remains to be stated that penalty was imposed and as fixed by the appellate forum, the petitioner has made payment on 11.8.2006. The learned counsel for the respondents brought to the notice of the court that the crucial date for preparation of the panel for 2006-2007 was 15.8.2005. At the time of preparation of panel, the penalty imposed against him was also in force. For the panel to be prepared for the year 2007-08, the crucial date was 15.8.2006 and the petitioner has made the payment on 11.8.2006. Hence, at the time of preparation of panel for the year 2007-08, he has made the payment also. Thus, there cannot be any impediment for issuing direction to the department to include his name in the panel to be prepared for the year 2007-08. Accordingly, a direction is issued to the respondents to give effect to the order, by including the name of the petitioner in the panel to be prepared for the year 2007-08 and to give proper placement. Accordingly, it is ordered and W.P.No.27908 of 2006 is disposed of. No costs. Consequently, the connected MP is closed.

19.In W.P.No.31335 of 2007, the learned counsel for the petitioner has made an endorsement that he may be permitted to withdraw the petition. Since the relief has been granted in the other writ petitions and final orders have also been passed, this writ petition is of no consequence. The endorsement made by the learned counsel for the petitioner is recorded. In view of the same, W.P.No.31335 of 2007 is dismissed as withdrawn. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vvk

To

1.The Chief Conservator of Forests,
Social Forestry Wing,
Chennai-600 015.

2.The Conservator of Forests,
Social Forestry,
Chengalpattu Circle,
Chengalpattu.

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3.The District Forest Officer,
Coimbatore Division,
Coimbatore.
4.The Secretary to Government,
Government of Tamil Nadu
Environment and Forests Department,
Fort St. George,
Chennai-600 009.
5.The Principal Chief Conservator
of Forests,
Chennai-600 015.
6.The District Forest Officer,
Kodaikanal Division,
Kodaikanal.

7. The Chief Conservator of Forests (Territorial)
O/o. The Principal Chief Conservator of Forests
Chennai-15

4 ccs to M/s.M. Ravi, Advocate, sr. 61037, 61038, 61039, 61040
1 cc to Spl. Government Pleader, Sr. 60956

W.P.NOs.35589, 27908 and
4292 of 2006 and
31335 of 2007

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